



Montgomery County Chamber of Commerce  
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May 22, 2020

Mr. Kim Herrington  
Acting Principal Director, Defense Pricing and Contracting  
Office of the Secretary of Defense  
U.S. Department of Defense  
3060 Defense Pentagon  
Washington, D.C. 20301

Dear Mr. Herrington:

On behalf of Montgomery Chamber of Commerce's GovConNet Council, consisting of government contracting industry experts, we are writing to provide feedback on the recently released draft guidance on requests for reimbursement under section 3610 of the CARES Act. Thank you for the opportunity to provide input on these important documents. Below are our suggestions and questions on the *DoD Checklist for Submission of Section 3610 Reimbursement Request*.

- Section 4
  - *"Identify the contractor's non-Government commercial work over the period covered by the Section 3610 reimbursement request, and describe the allocation and method of allocation of COVID-19 paid leave costs between Government and commercial customers."*
    - What is the accumulation of this data for? Is this only if the direct employee works on multiple programs?
- Section 5, (b)
  - *"Current status of contractor's accounting system for Government contracting purposes"*
    - When the status is undetermined, what is the impact to the contractor? We are concerned that if this information causes a delay, it could be harmful to the contractor and delay contractor payments. Will the government use this to potentially release progress payments of costs?
  - *"Adequate data, documentation, and information to support the requested Section 3610 reimbursement (provided in electronic format whenever possible)"*

- The word “reimbursement” is not clear in this context. In this section, each other item has a clear deliverable what else is asked for – this one does not.
- Section 5, (c)
  - *“Note that if reimbursement is requested for employees who are typically charged indirectly, the contractor should provide a detailed explanation of how each individual indirect employee meets the criteria addressed in DFARS 231.205-79(a)(1)(ii).”*
    - This situation would not occur if the contractor also receives recovery of indirect rates.
  - *“Average hours worked, by employee, by contract/order/etc., for the three months prior to the declaration of the COVID-19 national emergency; indicate whether each employee is direct (assigned to a single contract/order); direct supporting multiple contracts; or indirect;”*
    - This request is an excessive amount of information to ask for from the contractor and should be removed. There are many circumstances that employees work under and since most staffing is approved, this seems burdensome, especially if the employee is approved for work on the contract. This data will cause more harm than good in the spirit of maintaining a ready workforce.
- Section 5, (d)
  - *“Average sick leave hours budgeted for and included in any forward pricing for the period claimed for Section 3610 reimbursement, to assist the Government in determining how much sick leave is already included in indirect rates. For firm-fixed priced (FFP) contracts, contractors must remove sick leave costs that are included in the indirect rates that were used to price the FFP contract. Contractors shall ensure that any COVID-19 Paid Leave costs requested for reimbursement under Section 3610 is in addition to or outside of established policy or practice or collective bargaining agreement leave amounts. Contracts may not be reimbursed for COVID-19 Paid Leave costs for salaried employees to the extent that the salaried employee is paid whether they are working or not.”*
    - Will this cause contractors to mandate the use of sick leave for contractors? It is our understanding that “ready state” does not translate directly into sick leave.
- Section 6, generally
  - We suggest adding a section here to insert the time period covered for the PPP loan. This is important because Section 3610 relief may be during a different time period.

- Section 6, (a)
  - *“Does the contractor anticipate meeting the conditions for loan forgiveness identified in Section 1106 of the CARES Act?”*
    - Contractors will not know loan forgiveness until after final approval from lending institution. Also, most contractors are excluding Section 3610 labor from loan forgiveness applications. We believe a more precise accounting method is to have contractors answer the question with a yes/no, and then require a credit after loan forgiveness. This will also help ensure there is no gain, or double-dipping, from the use of multiple programs.
  - *“loan forgiveness amount must be excluded from any request for reimbursement under Section 3610”*
    - Is the goal from the Department to exclude them from the initial Section 3610 request or from the invoice reimbursement request? Loan forgiveness is undeterminable at this time by any contractor as the guidelines were received on 5-14-2020. Audits and other Small Business Administration (SBA) requests are unknown at this time, therefore a contractor would be unable to simply answer yes or no to anticipating loan forgiveness when applying for Section 3610. It would be more prudent for the Department to ask for the credit at the time of the invoice submittal in order to ensure that the affected contract is credited appropriately. Credits should be applied directly to the invoice and not applied to direct and indirect cost, as that is burden on government contractors and will distort their actual cost.
  - *“Specify the amount of credit anticipated”*
    - As this changes, is there a requirement for this information to be updated?

Making these changes and considering the questions raised above is critical for small and midsize contractors to continue operations and remain in a “ready state.” Thank you for your consideration and please contact [bashe@montgomerycountychamber.com](mailto:bashe@montgomerycountychamber.com) with any questions.

Sincerely,



Barbara Ashe  
Executive Vice President, Montgomery County Chamber of Commerce  
President, Montgomery County Chamber Community Foundation  
National Director, Veteran Institute for Procurement (VIP)